

## First Supplement to Memorandum 98-13

### Response to Demand for Production of Documents in Discovery

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Attached is a letter from attorney William Whittington of Sacramento. He appears to be writing for the California Association of Collectors. He doubts the advisability of the recommended change from 20 to 30 days for a response to a demand for production of documents. He says existing law is "working fine" and "does not present any problems" of which he is aware. He says the existing 20-day period forces the person on whom demand is made "to get his case organized, which is not without some merit." He also says existing law "in many cases, greases the settlement skids for both plaintiff and defendant," although it is not obvious why this is so.

As reported in the basic memo, the recommended change is moving forward independently of the Commission's recommendation in the Assembly Judiciary Committee's civil practice bill, AB 1094. The change was recommended by the State Bar. The bill passed the Assembly, and is pending in the Senate Judiciary Committee where it has not yet been set for hearing.

Notwithstanding AB 1094, the Commission must decide whether or not to recommend the proposed change. The staff continues to believe it is desirable, because it will make the time for a response to a demand for production of documents the same as the 30-day period for a response to written interrogatories and requests for admission, and will make this aspect California discovery the same as under Rule 34 of the Federal Rules of Civil Procedure.

Respectfully submitted,

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Staff Counsel

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Law Revision Commission  
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Re: Proposed Revision of CCP 3031

Stan Ulrich  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, Ca. 94303-4739

Dear Mr. Ulrich:

The proposed change to referenced code section, whereby the "statement of compliance", presently required to be served upon the party making the document demand, within 20 days of service of the request for production of documents, would be modified to 30 days, was referred to me by Lawrence H. Cassidy of the California Association of Collectors for review and comment, with a request that I send any comments to you for your consideration.

I have been engaged in civil litigation practice for some thirty-six years plus and am closely familiar with the use and applications of referenced code section. My practice for the past twenty years has involved extensive document discovery as I specialize in commercial collections which necessarily often becomes a document quagmire, with the documents frequently being the determining factor in the plaintiff's case.

The statement of compliance has been a useful and valuable tool in the document discovery process as it now stands. It regularly provides a fore-warning of any potential problems, an opportunity to make a prior evaluation of the proposed production or non-production of requested documents and in many cases can trigger the waiver of right to object to any item requested. There are numerous other minor tactical points it can make available, as well. The code section already provides all the necessary procedures that the parties may want to agree to have apply to the discovery, but more importantly it provides some teeth in the process when the parties are not co-operative, which is the more common situation.

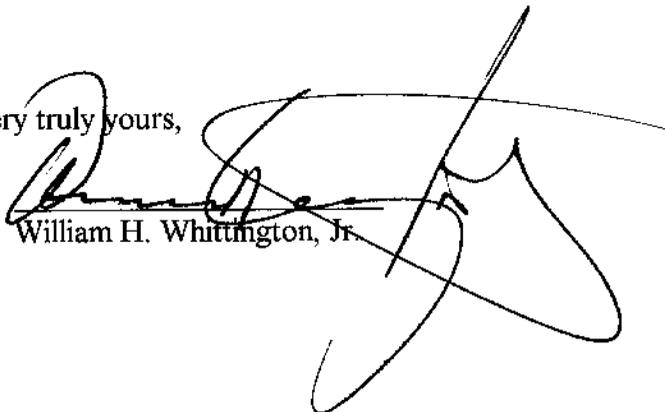
It would seem that by changing the time period to the same as the production deadline you have, for all practical purposes, eliminated the provision or certainly it's effect in the scheme of that particular discovery procedure.

To the casual observer there is some appearance that the proposers of the change do not engage in regular discovery activity out here in the "real" world of civil litigation. The phrase "why fix it, if it ain't broke?" comes to mind because the provision has been and is working fine, as is, does not present any problems that I am aware of, and is the result of discovery progression over the years that eliminated what is now being considered to be put back into the mix.

By way of a final comment, not quite on target, the requirement also forces the producer to get his case organized, which is not without some merit and, I believe, in many cases, greases the settlement skids for both plaintiff and defendant

I hope these observations are of some value to you and that they may assist you in your considerations regarding this subject. If I can be of any further help to you, please do not hesitate to call.

Very truly yours,

  
William H. Whittington, Jr.